2004

State of Utah v. Tanja Rynhart : Reply Brief of Petitioner

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff/Petitioner,	:	
v.	:	
TANJA RYNHART,	:	Case No. 20040115-SC
Defendant/Respondent.	:	

REPLY BRIEF OF PETITIONER

ON WRIT OF CERTIORARI TO
THE UTAH COURT OF APPEALS

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REPLY BRIEF OF PETITIONER

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This Court granted certiorari to review ***State v. Rynhart***, 2003 UT App 410, 81 P.3d 814. A copy of the opinion is attached to the State's Brief of Petitioner [*Petitioner Br.*]. In addition to the facts and argument contained in its opening brief, the State submits the following in reply to defendant's responsive brief [*Respondent Br.*]

REPLY TO DEFENDANT'S RELIANCE ON PROPERTY PRINCIPALS

Defendant claims that for Fourth Amendment purposes "[t]here are two situations where a vehicle may be considered abandoned. The first is statutorily [citing Utah Code Ann. § 41-6-116.10 (West 2004)] and the second is factually" (*Respondent Br. at 5-6*). This is incorrect.

Section 41-6-116.10 defines when an unattended vehicle may be presumed legally abandoned for purposes of the traffic code. ***See*** *Addendum A (statues).* The section establishes a set time after which a vehicle—even if otherwise legally parked—may be seized

and removed by the police. ***See*** *Add. A.* Subsections (1)(b) & (4), for example, would permit police seizure and impound of a locked vehicle left in a campground parking lot for more than seven days. Subsection (1)(a) & (4) would allow the seizure and impound of any vehicle left on the highway for more than 48 hours, even if the vehicle was locked and out of traffic. Section 41-6-116.10, however, has no applicability here.

In this case, it is undisputed that defendant left her vehicle on another's property following an accident. Whether as a result of intoxication or bad weather, defendant drove her minivan over a street curb, down an embankment, through two livestock fences, and into a marsh (R.72: 3; R73: 10, 14). Without notifying the property owner of the damage or leaving an identifying note on her vehicle, defendant illegally left the scene of the accident (R72: 4-5). ***See*** Utah Code Ann. § 41-6-32 (West 2004) (requiring a driver involved in an accident to directly notify the property owner of damage or to attach a note identifying the driver in a "conspicuous place") (*Add. A*).[1] She left the van's doors unlocked, left a briefcase on the front seat, left her purse on the front floor, and left a partially full bottle of vodka between the front seats (R72: 4-5; R73: 10).

It is uncontested that after the vehicle was discovered, the owner of the field wanted it removed. ***See*** Utah Code Ann. § 45-6-102.7 (West 2004) (recognizing that a real property

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[1]Defendant protests she did not need to comply with the statutory requirement because it was "unlikely that her identity would remain a mystery" and it was "unrealistic" to expect her to "write her name and address on a piece of paper [and] attach it on a conspicuous place" (*Respondent Br. at 7-8*). Given the conspicuous place she left the vehicle, attaching an identifying note was a small requirement.

owner may authorize the removal of a vehicle on his property). The van had been left unattended in the middle of the marsh for at least five and one-half hours (R72: 4). The police arranged for the van to be towed and kept "safe" until the vehicle's owner could be located (R72: 6).

More significantly, the statutory definition of an "abandoned" vehicle for purposes of the traffic code is not determinative of the constitutional question here—that is, did defendant forfeit a reasonable expectation that her minivan and personal effects would be free from intrusion when she left the wrecked vehicle unlocked and her personal effects in open view in a privately-owned field following an accident involving property damage?

As discussed in *Petitioner Br. at 8-9*, proper Fourth Amendment analysis is not dependent on property laws and concepts. Instead, the constitutional protection derives from society's recognition of the reasonableness of an individual's expectation that her property or effects will be free from outside intrusion. ***See Katz v. United States***, 389 U.S. 347, 351 (1967). ***Accord Rakas v. Illinois***, 439 U.S. 128, 133-34 & 142 n.12 (1978). When an individual relinquishes her legal interests in property, that is, her propriety and possessory interests, she necessarily also relinquishes her constitutional interest. ***Cf. Rakas***, 439 U.S. at 142 n.12. The reverse is not true. An individual may forfeit a reasonable expectation of privacy in property while fully maintaining her property rights in an object. ***See Katz***, 389 U.S. at 351. The Sixth Circuit Court of Appeals explained the distinction in a case in which a briefcase was left inside a vehicle that had suddenly caught fire on the side of the highway:

> When one leaves a suitcase in an airport baggage claim area, he leaves it in a place where there is normally some measure of security. It is reasonable to expect that checked luggage will be locked up, if not claimed within a reasonable time, and will be kept safe until the person holding the claim check comes to retrieve it. One who chooses to leave luggage in an unlocked burned-out automobile at that side of a highway in the country can fairly be thought to have a much lower expectation of privacy . . . Flaming cars do tend to attract a certain amount of attention. Flames may keep people at a respectful distance for a time, but fires eventually die out; and a fire-ravaged automobile, left unprotected in the open countryside invites just the kind of examination [the defendant] feared his would receive.

United States v. Oswald, 783 F.2d 663, 667 (6th Cir. 1986). Likewise, here, a vehicle in the middle of a marsh reasonably invites examination.

REPLY TO DEFENDANT'S ARGUMENT THAT HER VEHICLE WAS NOT FREELY ACCESSIBLE

Defendant admits that any passer-by, including the field's owner, had physical access to her vehicle during the five-plus hours it was left unlocked in the marsh. ***See*** *Respondent Br. at 8.* Defendant claims, however, that if the passer-by opened the unlocked doors and looked inside her purse and briefcase, the passer-by would be guilty of criminal trespass or vehicle burglary. ***See*** *id.* Defendant claims that, consequently, the police were not entitled to access the interior. ***See*** *id.* Again, defendant's argument ignores proper Fourth Amendment analysis.

Defendant's initial factual predicate is incorrect. Vehicle burglary requires an unlawful entry coupled with an "intent to commit a felony or theft." ***See*** Utah Code Ann. § 76-6-204 (West 2004) (defining vehicle burglary as an unlawful entry coupled with "intent to commit a felony or theft) (*Add. A.*). Similarly, criminal trespass requires that an unlawful

entry be coupled with an intent to annoy or injure a person, damage property, or otherwise commit a theft or felony. ***See*** Utah Code Ann. § 76-6-206 (West 2004) (*Add. A*). A passer-by who, following an accident, enters an unlocked unattended vehicle and opens a purse and briefcase to discern the identity of the driver—as the officer did here—is not guilty of a crime. The passer-by is simply a Good Samaritan.

Contrary to defendant's characterization of the State's argument, a defendant does not lose all expectations of privacy whenever she forgets to lock a door. ***See*** *Respondent Br. at 8-9.* Nor can the police search anytime they have physical access to a place. ***See*** *Respondent Br. at 8.* But when a defendant fails to take normal precautionary measures to protect her property from intrusion and leaves it unlocked in a field accessible by any person, she cannot claim that the property is nevertheless constitutionally protected.

The objective facts control; defendant's subjective intent is irrelevant. ***See Oliver v. United States***, 466 U.S. 170, 182-83 (1984); ***United States v. Tugwell***, 125 F.3d 600, 602 (8th Cir. 1997); ***United States v. Thomas***, 864 F.2d 843, 846 (D.C. Cir. 1989). Indeed, courts often presume that a defendant harbors a hope that no governmental intrusion will occur before the property is retrieved. ***See Oswald***, 783 F. 2d at 667-668. But that fact is not controlling. Instead, the determining factor is whether defendant's *actions* would lead object "a reasonable person in the searching officer's position" to believe that defendant forfeited any reasonable expectation of privacy in the item to be searched. ***See United States v. Pitts***, 322 F.3d 449, 456 (7th Cir. 2003). To answer that question, courts look "solely to the external manifestations of the defendant's intent as judged by a reasonable person possessing

the same knowledge available to the government agents involved in the search." ***Id.***

The totality of the circumstances must be considered in determining if an object is constitutionally protected. ***See Oliver***, 466 U.S. at 177-78. Objects openly exposed to the public or in a place freely accessible to the public are not private. ***See id.*** at 178-79 (refusing to accord objects and activity in open fields constitutional protection). Unlocked objects are generally not accorded the same protection as locked objects. ***Cf. United States v. Basinski***, 226 F.3d 829, 827 (7th Cir. 2000) (recognizing that a defendant has a legitimate expectation of privacy in a locked briefcase hidden in a private place). If the circumstances surrounding the object invite inspection, less privacy is accorded. ***See Oswald***, 783 F.2d at 677 (holding that a burning car on the side of the road invites inspection by police and any one passing by). And if an object is physically relinquished, it is accorded less protection even if its owner intends to later reclaim it. ***See United States v. Baisinski***, 226 F.3d 829, 836 (7th Cir. 2000). In sum, "'what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.'" ***See California v. Greenwood***, 486 U.S. 35, 41 (1988) (quoting ***Katz***, 389 U.S. at 351).

Here, the totality of circumstances establish that a reasonable person would not expect an unlocked van to be free from intrusion if left for hours in someone else's field. ***See*** *Petitioner Br., Statement of Facts at 4-6.*

CONCLUSION

For the reasons stated in this and the State's opening brief, the Court should reverse the court of appeals and affirm the trial court's interlocutory order denying defendant's motion to suppress. The matter should then be remanded to the district court for trial.

RESPECTFULLY SUBMITTED this 16 day of March, 2005.

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MAILING CERTIFICATE

I certify that on 16 March, 2005, I caused to be mailed, postage prepaid, two copies of the foregoing BRIEF OF PETITIONER, to:

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Addendum A

§ 41-6-32. Collision with unattended vehicle or other property—Duties of operator—Penalty

(1)(a) The operator of a vehicle that collides with or is involved in an accident with any vehicle or other property that is unattended and that results in damage to the other vehicle or property shall immediately stop and shall:

(i) locate and notify the operator or owner of the vehicle or the owner of other property of the operator's name and address and the registration number of the vehicle causing the damage; or

(ii) attach securely in a conspicuous place on the vehicle or other property a written notice giving the operator's name and address and the registration number of the vehicle causing the damage.

(b) If applicable, the operator shall also give notice under Subsections 41-6-31(2) and (3).

(2) A person who violates Subsection (1) is guilty of a class B misdemeanor.

§ 41-6-102.7. Removal of unattended vehicles prohibited without authorization—Penalties

(1) In cases not amounting to burglary or theft of a vehicle, a person may not remove an unattended vehicle without prior authorization of:

(a) a peace officer;

(b) a law enforcement agency;

(c) a highway authority, as defined under Section 72-1-102, having jurisdiction over the highway on which there is an unattended vehicle; or

(d) the owner or person in lawful possession or control of the real property.

(2)(a) An authorization from a person specified under Subsection (1)(a), (b), or (c) shall be in a form specified by the Motor Vehicle Division.

(b) The removal of the unattended vehicle shall comply with requirements of Section 41-6-102.5.

(3) The removal of the unattended vehicle authorized under Subsection (1)(d) shall comply with requirements of Section 72-9-603.

(4) A person who violates Subsections (1) or (3) is guilty of a class C misdemeanor.

§ 41–6–116.10. Abandoned vehicles—Removal by peace officer—Report—Vehicle identification

(1) As used in this section, "abandoned vehicle" means a vehicle that is left unattended:

(a) on a highway for a period in excess of 48 hours; or

(b) on any public or private property for a period in excess of seven days without express or implied consent of the owner or person in lawful possession or control of the property.

(2) A person may not abandon a vehicle upon any highway.

(3) A person may not abandon a vehicle upon any public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(4) A peace officer who has reasonable grounds to believe that a vehicle has been abandoned may remove the vehicle or cause it to be removed in accordance with Section 41–6–102.5.

(5) If the motor number, manufacturer's number or identification mark of the abandoned vehicle has been defaced, altered or obliterated, the vehicle may not be released or sold until the original motor number, manufacturer's number or identification mark has been replaced, or until a new number assigned by the Motor Vehicle Division has been stamped on the vehicle.

§ 76–6–204. Burglary of a vehicle—Charge of other offense

(1) Any person who unlawfully enters any vehicle with intent to commit a felony or theft is guilty of a burglary of a vehicle.

(2) Burglary of a vehicle is a class A misdemeanor.

(3) A charge against any person for a violation of Subsection (1) shall not preclude a charge for a commission of any other offense.

§ 76-6-206. Criminal trespass

(1) For purposes of this section, "enter" means intrusion of the entire body.

(2) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section 76-10-2402 regarding commercial terrorism:

(a) he enters or remains unlawfully on property and:

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Section 76-6-107;

(ii) intends to commit any crime, other than theft or a felony; or

(iii) is reckless as to whether his presence will cause fear for the safety of another;

(b) knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entering is given by:

(i) personal communication to the actor by the owner or someone with apparent authority to act for the owner;

(ii) fencing or other enclosure obviously designed to exclude intruders; or

(iii) posting of signs reasonably likely to come to the attention of intruders; or

(c) he enters a condominium unit in violation of Subsection 57-8-7(7).

(3)(a) A violation of Subsection (2)(a) is a class C misdemeanor unless it was committed in a dwelling, in which event it is a class B misdemeanor.

(b) A violation of Subsection (2)(b) is an infraction.

(4) It is a defense to prosecution under this section that the:

(a) property was open to the public when the actor entered or remained; and

(b) actor's conduct did not substantially interfere with the owner's use of the property.